

EXHIBIT B

UNIT STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

NO. 1:10-CV-156-SM

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ALVIN B. GALUTEN, MD, PSC *

vs. *

MEDICUS RADIOLOGY STAFFING, LLC *

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DEPOSITION OF ABBOTT GRANT SMITH

Deposition taken at the law offices of
Sheehan, Phinney, Bass + Green, 1000 Elm
Street, Manchester, New Hampshire, on Friday,
April 8, 2011, commencing at 2:13 p.m.

Court Reporter:

Denise Cascio Bolduc, LCR, RPR
NH Licensed Court Reporter No. 32
(RSA 310-A:161-181)

1 discussing any other topics.

2 Q. BY MR. HOWARD: Do you recall, Mr. Smith, if after
3 the conversation on or about the 14th if you had
4 any other telephone conversations with Dr. Galuten?

5 A. I don't believe I did.

6 Q. And based on your earlier testimony, is it fair for
7 me to conclude that you didn't have any telephone
8 conversations with him prior to the 14th? If I
9 didn't say telephone conversations, I meant to.
10 We've already covered in-person conversations.

11 A. I can't think of a specific additional time that I
12 had a phone conversation with Dr. Galuten, but I'm
13 not a hundred percent sure.

14 Q. All right. Do you recall if you personally had any
15 email communication with Dr. Galuten?

16 A. I don't recall.

17 Q. Based on the email that's in Exhibit 15, it
18 suggests in there that Dr. Galuten's last day of
19 service prior to taking the time off would be
20 May 20.

21 Do you see that there?

22 MR. MCGRATH: Objection. Time off.

23 Q. That his last day of service would be May 20,

1 correct?

2 A. Correct.

3 Q. All right. After May 20, do you recall having any
4 conversations with anybody about Dr. Galuten
5 requesting to return to the assignment?

6 A. I do.

7 Q. And, first, with whom did you have this
8 conversation?

9 A. Zac Rizzo.

10 Q. Do you recall if you discussed Dr. Galuten's
11 potential return with anybody else?

12 A. Me personally, no.

13 Q. Okay. My question was whether you recalled having
14 any conversations with anybody else. I want to
15 make sure I understand your answer.

16 You don't recall you having any other
17 conversations with anybody else?

18 A. Correct.

19 Q. Do you understand that other conversations occurred
20 among other people?

21 A. I believe they did.

22 Q. What do you understand were the conversations among
23 others?

1 A. Whether or not it was acceptable to have
2 Dr. Galuten return.

3 Q. And do you know who was having that conversation?

4 A. I would only be speculating if I . . .

5 Q. Okay. Do you know if anybody from Medicus spoke
6 with the hospital about whether they wanted him to
7 return, whether the hospital wanted him to return?

8 A. It's my understanding that there was a conversation
9 between a Medicus representative and the hospital
10 about whether or not they wanted Dr. Galuten to
11 return.

12 Q. Do you know who the Medicus representative was?

13 A. I don't.

14 Q. Do you know who the hospital representative was?

15 A. I don't.

16 Q. What were you told was the result of that
17 conversation?

18 A. That they did not want Dr. Galuten to return.

19 Q. All right. Were you told why the hospital didn't
20 want him to return?

21 A. Multiple issues. The first being the way that he
22 had treated a hotel clerk at a hotel that the
23 hospital had a business relationship with where

1 they allowed other physicians to stay while
2 covering at the hospital and that he had insulted
3 that clerk. He had called 911 and requested a ride
4 to the hospital. And he had made unreasonable
5 requests of the hotel staff and that he was no
6 longer allowed to return to that hotel.

7 That after some analysis, the amount of
8 work that Dr. Galuten was completing relative to
9 the amount of hours that he was working was subpar
10 to what the traditional expectations are for a
11 radiologist.

12 Q. Can you think of any other issues? I'm sorry. I
13 was waiting for you to say more. You had said
14 there were multiple issues. You've identified
15 issues relating to the hotel, and you just
16 mentioned the volume of work he was completing
17 relative to the hours that he was reporting
18 seemed -- was subpar for radiologists.

19 A. Correct.

20 Q. Can you think of any other issues that the hotel
21 identified as to why they didn't want him back?

22 MR. MCGRATH: You mean the hospital?

23 MR. HOWARD: I do mean the hospital.

1 A. Correct.

2 MR. HOWARD: Objection. Go ahead.

3 Q. Well, maybe I'm confused.

4 Explain what you understood was the
5 substance of your conversation with Dr. Galuten on
6 the 14th to the best that you're able to recall.

7 A. I was very clear with Dr. Galuten that if he
8 couldn't give us a date to return, that his -- we
9 would not be able to continue to use him in the
10 schedule and to provide coverage and that his
11 contract was terminated. I made the decision not
12 to allow Dr. Galuten back into the schedule on or
13 around that date.

14 Q. Before you tell me about -- I think you were going
15 to tell me about the reasons for that, but before
16 you do, when you talk about letting him back into
17 the schedule, what does that mean?

18 A. That means that Dr. Galuten would contract with us
19 to provide new dates of coverage.

20 Q. Okay. So there would be a new Schedule A, for
21 example?

22 A. There would be a new Schedule A.

23 Q. And that's what you were testifying to a few

1 May 14?

2 A. I'm certain that when I had the conversation with
3 him on May 14, that was one of the issues that we
4 had experienced with Dr. Galuten that had created
5 concerns for me in having him return to that
6 hospital.

7 Q. Okay. So it was on your mind when you were having
8 the conversation on May 14? You knew about the
9 hospital incident at that time? The hotel
10 incident. Excuse me.

11 A. I just know that it was a part of why I made the
12 decision not to allow him to return.

13 Q. Well, I thought you had explained to me before that
14 that was based on conversations you had in early
15 June with Nicole, Zac, or Patrick?

16 MR. MCGRATH: Objection.

17 A. I'll restate my position: Dr. Galuten -- we were
18 not going to sign a new Schedule A, a new contract,
19 with Dr. Galuten. He was in breach of the one that
20 we had in place. He was contracted to cover -- I'm
21 not sure -- 16 weeks. He covered three, and then
22 given us notice that he could not tell us when he
23 would be able to return.

1 minutes ago when Attorney Howard was asking you?

2 A. Yes.

3 Q. Okay. So you were -- you were about, I think, to
4 tell us the reasons why you decided not to enter
5 into a new Schedule A with Dr. Galuten.

6 What were the reasons for that?

7 A. The primary reason was his lack of ability to
8 commit to a return date and our responsibility to
9 cover 100 percent of the schedule.

10 In addition to that, it was the issues
11 that I had mentioned earlier: His behavior at the
12 hotel, his assumption it was okay to work those
13 hours of overtime without preapproval, calling 911
14 to give him a ride to the hospital. Those issues,
15 in conjunction with "I can't tell you when I'm
16 going to return to work" helped me decide that we
17 were not going to sign a new Schedule A with
18 Dr. Galuten.

19 Q. Thank you. I have nothing further.

EXAMINATION

20 Q. BY MR. HOWARD: I need to follow up.

21 You are certain in your mind you knew
22 about the hotel incident when you talked to him on

1 I remember making a decision that we were
2 not going to sign a new contract with Dr. Galuten.
3 There were multiple factors that weighed into that
4 decision. The primary one being no specific date
5 of return.

6 The other issues weighed in my decision
7 either at that point in time in May or when
8 Dr. Galuten notified us that he wanted to return.

9 Q. One of the issues that you just articulated in
10 response to Attorney McGrath's question was the
11 amount of overtime that he was doing without
12 preapproval.

13 You would agree with me, first of all,
14 that you had not identified that prior to Attorney
15 McGrath's question in response to any of the
16 questions that I asked you?

17 A. I believe we discussed overtime previously as being
18 one of the issues.

19 Q. What you said to me before was the volume of work
20 he was concluding in relation to the amount of
21 overtime.

22 A. Correct.

23 Q. And now you seem to be saying an issue is the